IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 28TH JUNE 2007 / 7TH ASHADHA 1929

Crl.MC.No. 2071 of 2007()

(CRL. M.C. NO. 109/2007 of SESSIONS COURT, ERNAKULAM)

PETITIONER: PETITIONER:

SHAJAHAN, S/O.ASSIS, AGED 29 YEARS,
PARAYIRIKKUMPURAYIDATHIL HOUSE,
NERIYAMANGALAM.

BY ADV. SRI.GEORGE SEBASTIAN
SRI. BIJU KURIAKOSE

RESPONDENTS: RESPONDENT:

STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR , HIGH COURT OF KERALA.

BY ADV. SRI. M.S. BREEZ, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 28/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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Crl.M.C. No.2071 Of 2007

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Dated this the 28th day of June, 2007

ORDER

Petitioner faces allegations under Sec.457 and 376 IPC. He remains in custody from 3.12.06. By order dated 24.1.07, the learned Sessions Judge directed that the petitioner be released on bail subject to conditions. He was directed to execute a bond of Rs.25,000/- with 2 solvent sureties . There was a further direction that one of such sureties must produce a solvent certificate before the the learned Magistrate.

2. According to the petitioner he is aggrieved by that condition and in this petition, the petitioner challenges that direction. He has not so far been able to produce such solvency certificate. Hence he has been compelled to remain in custody from 31.12.06, in spite of the order in question dated 24.1.07. The difficulty of the petitioner is genuine. If he could produce such surety, he would not have chosen to remain in custody. The learned counsel for the petitioner submits that rigid insistence on production of solvency certificate may not be made and the learned Magistrate may be directed to consider the adequacy and sufficiency of the sureties on the basis of whatever document that is made available to the Court by

the surety. Appropriate decision may be directed to be taken by the learned Magistrate in this regard.

3. Learned Public Prosecutor does not oppose the specific prayer but only submits that appropriate and sufficient sureties may be insisted by the learned Magistrate before he accepts them.

4. I have considered all the relevant inputs and I am satisfied that the petitioner is unable to take advantage of the order granting bail to him passed as early as on 24.1.07 and is constrained to remain in custody only because of such condition imposed. I accept his submission on that aspect. I am satisfied that it is not necessary to insist on the production of the solvency certificate of the surety.

5. The learned Magistrate may consider all such materials as may be placed before him by the accused and his sureties and consider the acceptability of such sureties without making any such rigid insistence. In the result, this petition is allowed. The direction of the Magistrate that the surety must produce solvency certificate is hereby deleted. The learned Magistrate may consider and accept any surety, provided, the learned Magistrate is satisfied on whatever materials are placed by the sureties, that they are sufficient and solvent.

(R.BASANT, JUDGE)

sj